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REPORT

OF THE

COMMISSION

TO EXAMINE THE LAWS RELATING TO THE

Recording of
DEEDS and MORTGAGES,
Transfer of
Lands, Insurance of Titles, Etc.,

With a

DRAFT of a PROPOSED AMENDMENT
To the
CONSTITUTION of the STATE

MADE TO THE

LEGISLATIVE SESSION, 1913.

MAGEE PRINTING CO., INC.
PHILADELPHIA, PA.
1913

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REPORT OF THE COMMISSION APPOINTED BY
THE GOVERNOR OF THE COMMONWEALTH
OF PENNSYLVANIA UNDER AND BY AU-
THORITY OF THE GENERAL ASSEMBLY, TO
EXAMINE THE LAWS RELATING TO THE
RECORDING OF DEEDS AND MORTGAGES,
TRANSFER OF LANDS, INSURANCE OF
TITLES, ETC., AND TO RECOMMEND SUCH
ACT OR ACTS OR CHANGES IN THE CON-
STITUTION AS WILL, IN THE OPINION OF
THE COMMISSIONERS, MATERIALLY IM-
PROVE THE PRESENT SYSTEM, ETC.

*To the Honorable the Senate and House of Representa-
tives of the Commonwealth of Pennsylvania:*

Pursuant to a concurrent resolution of the General Assembly of the Commonwealth of Pennsylvania, approved May 12th, 1911, Joseph K. Fletcher, James E. Lennon and Frank Craven, of Philadelphia, and John C. Slack and George T. Hetzel, of Pittsburgh, were appointed by the Governor a Commission to investigate the different systems of recording deeds and mortgages, and insurance of titles, now in effect in the several States, and report to a subsequent session of the Legislature such act or acts or changes in the State Constitution as will materially improve the present system in the State of Pennsylvania and authorize Counties to insure purchasers of real estate against defects in titles and provide for the assistance and co-operation of the Legislative Reference Bureau. And it was further RESOLVED "That the Governor of the Commonwealth be, and he is hereby, authorized to

Appointment
and Authority
of the
Commission

appoint a Commission consisting of five citizens of Pennsylvania, whose duty it shall be to investigate and examine the various laws now in effect in the different States relating to the recording of deeds and mortgages, the transfer of lands, the insurance of titles, and the practical operation of such laws, and report to the next session of the Legislature such act or acts and changes in the Constitution, if necessary, which, in the opinion of the Commission, will materially improve the present system governing the recording of deeds and mortgages in the several Counties of this State, with a special view of recommending a law authorizing the Counties of the State to assume the responsibility of insuring purchasers of real estate against pecuniary damage by reason of defective titles."

THE SAID COMMISSION RESPECTFULLY
BEGS LEAVE TO REPORT:

That the above-named Commissioners were duly commissioned by his Excellency, the Governor, on the 20th day of December, A. D. 1911.

The Commission met in Philadelphia on the First day of February, 1912, and organized by electing Joseph K. Fletcher, Chairman, and James E. Lennon, Secretary.

It is with much regret that we have to report the death of George T. Hetzel, Deputy Recorder of Deeds, Pittsburgh, one of the Commissioners. He died on the 26th day of September, A. D. 1912. On the First day of December, 1912, the Governor appointed J. Smith Christy, of Pittsburgh, to fill the vacancy caused by the death of Mr. Hetzel.

For the purpose of learning the views of all interested parties, the Commission held public meetings: one at Philadelphia, on the Tenth day of June, 1912, and one at Pittsburgh, on the Fifth day of December, 1912. The meetings were given wide publicity through

the newspapers and by notices mailed to individuals and associations.

The meetings were attended by members of the Bar, real estate brokers and conveyancers, representatives of Building and Loan Associations and of The Building Association League of Pennsylvania, which League represents nearly all of the Building and Loan Associations of the State, and by representatives of the title insurance companies.

Many of those who attended gave full expression of their views on the subject, and the Commission was gratified to note the deep interest displayed by those present, showing that the questions involved have received attention from those who do business in the offices of the Recorders of Deeds and in transfers of real estate.

The Commission takes this opportunity of thanking those who attended, for their assistance.

The Commission also, for the purpose of obtaining all available information, corresponded with the officials of each of the States of the United States, and with the Executives of Australasia and Canada, and have collected a large amount of material which will be filed hereafter with the Legislative Reference Bureau.

The Laws relating to the Recording of Deeds in the several States of the Union, where a modern method patterned after the Torrens System has not been introduced, are similar to those of the State of Pennsylvania, and an explanation of the recording laws of this State will apply to them.

In Pennsylvania, the transfer of land is made by deed recorded, which record gives constructive notice to subsequent purchasers and mortgagees. This system of recording deeds, etc., was introduced into the Province of Pennsylvania in 1683, and an enrollment office was established on the lines of the enrollment system in Middlesex, England.

The first legislative enactment of 28th of May, 1715 (1 Smith's Laws, page 94), is the foundation of the present system of transferring lands by deed in Pennsylvania, and by various Acts of Assembly, passed at different times, there has been evolved a perfect system in this State whereby purchasers and owners have notice of all changes in the ownership of real estate and encumbrances. Notwithstanding the excellence of this system, drawbacks have developed. In former days, when our population was smaller, it satisfied the popular demand, but with the increase of population it has become less serviceable. The people are now largely concentrated in cities and populous towns; the density of population and the increase of real estate transactions are reflected in the mass of records in the offices of the various Recorders. In the County of Philadelphia alone, there have accumulated since 1683 over 15,000 large books of record.

In former years in transferring real estate it was necessary to prepare a brief of title, which required a laborious examination of the records for errors, mortgages, liens and other encumbrances, by persons of learning and experience. These Briefs of Title were then submitted to Lawyers, upon whose opinion the proposed transfers were made or rejected. This method was cumbersome and expensive. Generally, when an owner desired to sell, a re-examination of the title was required by the attorney or conveyancer of the subsequent purchaser, which entailed further delay and expense, especially if defects or flaws were discovered in the prior examination of the title. The cost was always borne by the purchasers or mortgagors.

This uncertainty and expense became so burdensome in time, as to affect the ready availability of Real Property as an asset and led to the formation of Title Guarantee Companies throughout the State. These

companies do the work which formerly was performed by the lawyer and conveyancer. They make and deliver searches for those who do not desire to insure their titles, which were formerly made and issued at the offices of the Recorders of Deeds and other County officers, and for themselves when they guarantee or insure against loss by reason of a defect in the title. In Philadelphia and Pittsburgh the guaranteeing of the title by a title company has become largely the practice. Back of this guaranty is the capital of the Company, instead of the opinion of a real estate lawyer, which may be erroneous, or may be disputed by the attorney for a subsequent purchaser or others.

Although this system of title insurance has given some relief, it still involves a new examination of title with every change of ownership.

In view of these facts, it cannot be doubted that the public is entitled to have the cost reduced and to have the operation of transferring titles to real estate made more simple, speedy and direct, if possible.

To overcome these objections, efforts have been made to devise a method to simplify, expedite and make more economical the transfer of land, and permit of the trading in real estate as expeditiously as in stocks, bonds and other securities, and to make titles thereto absolute.

After careful examination of the different methods of transferring real property now in use in the civilized countries of the world, a system of transferring real estate by registration of titles, sometimes called the "Torrens System," or modifications thereof, seems to overcome, to an extent, the present difficulties and merits careful consideration.

A form of this system of registering titles has been in use in Austria-Hungary from the Twelfth Century and has been universal in Austria since 1811. It was adopted in Prussia in the year 1872.

"The Torrens System" takes its name from Sir Robert Torrens, Baronet. About 1850 he became Registrar of Deeds of Adelaide, Australia. During his incumbency of that office he became familiar with the old system of transferring titles by deed and recording, which is substantially that now in general use throughout the United States. He was convinced that because of its lack of simplicity, accuracy, expedition and economy, it was out of harmony with the practical ideas and progress of the age.

As commissioner of customs, Sir Robert had become acquainted with the facility with which transfers were made of shares in ships under the Merchants' Shipping Acts. After his appointment as registrar of deeds he was impressed with the expedition and simplicity of that system as compared with the regulations surrounding the dealings in real estate. Modeled on the Merchants' Shipping Acts he finally evolved the scheme of registration of title, as opposed to the old system of registration of deeds, which has since become known as the "Torrens System."

In 1858 the Torrens System was introduced in South Australia with Torrens as the Registrar-General. This step, taken by South Australia, was soon followed by other colonies: Queensland in 1861, Victoria, New South Wales and Tasmania in 1862, New Zealand in 1870, West Australia in 1874 and Fiji in 1876. In England the matter has been agitated since 1850. In 1862 a Royal Commission was appointed and in accordance with its recommendations a land transfer act was passed in 1875, known as "The Lord Cairn's Act." There have been several Acts passed by Parliament since that time, terminating in the Act of 1901, which made the use of the system, under certain conditions, compulsory in the City of London. In British Columbia

the same system has been in operation since 1870; in the Provinces of Ontario and Manitoba since 1885.

In 1892 a Commission was appointed by the General Assembly of the State of Illinois to investigate "The Torrens System" of transferring titles; as a result of which a bill was introduced and passed which was declared unconstitutional and void by the Supreme Court of Illinois. A second Act was passed in May, 1897, and, as to the questions passed upon was held to be constitutional. Besides the decision in Illinois, it was upheld in Massachusetts in the case of Tyler vs. The Judges, 157 Mass.

History
in the
United States

In the State of Ohio an Act was passed by the Legislature, but was declared unconstitutional. To overcome the defect in this Act, an amendment to the Constitution of Ohio was adopted, September 3rd, 1912, by the votes of the People; there being a large majority in favor of the amendment authorizing the establishment of the system.

The system was adopted in California in 1897, in Oregon in 1901, and in Minnesota in 1902 and amended in 1909, in Colorado in 1903, in Washington in 1907, and in Massachusetts in 1908, in New York in 1908 and in some other States. It has also been adopted by the government of the United States in the Philippine Islands, Hawaii, and other insular possessions. The experience of these States shows that the system is more or less feasible, and, in large communities, of value.

The report of the Commission appointed in the year 1907 by his Excellency Charles E. Hughes, then Governor of the State of New York, now Justice of the Supreme Court of the United States, to examine the

system of registering titles to real property known as the Torrens System, says, in part:

"Of the three historical methods of dealing with transfers of real property, (1) transfer by instrument unrecorded and simply held by the owner, (2) record of instruments of transfer and incumbrance, and the giving of constructive notice by such record, and (3) registration of titles (as distinguished from registration of documents) as a means of assuring them and facilitating their transfer—the second method, which is used in New York and most of the States of this country, grows more cumbersome as it becomes older, and, in spite of efforts to make it less burdensome, is tending to break down of its own weight. The multiplication of records, the complication of titles, and the repeated expense of re-examination and the delays incident thereto, should be avoided, if any feasible method of doing so can be devised. We are very clearly of the opinion that a system of registering titles may be put in operation in this State, in such manner as to avoid these and other difficulties incident to the present system and to become of much utility and advantage to conveyancers and owners of real property.

"That such a system can be constitutionally made and operated seems to be clear from the authorities and arguments set forth in the brief on that matter.
* * * * *

"The feasibility of such a system has been practically shown by its working in other States, even against strong opposition; and this notably in Massachusetts, where the conditions are very similar to those in New York. The utility of interests in real property originates from, and rests upon, the State. It is natural and logical that by a fiat of its courts the State should increase that utility whenever possible. After a thorough examination and a certification by a competent examiner and care and deliberation on the part of a Justice of the Supreme Court, any ordinary title in this State may be so determined and assured, by a judgment of that Court, as to need practically no subsequent examination; and such a title may be so dealt with thereafter as to obviate the necessity of such investigations as are now made whenever a title is passed.

"Therefore, while recognizing the importance and advisability of some other changes in our

present Real Property law, such as are recommended in this report, we are convinced that the most important matter to be dealt with, and that which should demand the first attention of the Legislature, is a plan or method for registering titles to real property. The essential features of such a plan, and those which we have sought to embody in the accompanying proposed bill, are as follows:

“1. The primary objects to be accomplished by the system are to give greater security and certainty to titles, to avoid the necessity of long and repeated examinations of titles in the future, and to make real property interests, because of the ease and quickness with which they can be transferred, more readily available as security and assets, and thus cause them to become more useful and valuable.

“2. Registration must be in the first instance the outcome of a judicial proceeding which, as far as possible, shall determine and quiet the title and fix and specify the matters, if any, that may still be left undetermined or to be worked out in the future.

“3. Because of the age, value and importance of titles in this State, the system should be voluntary, and adopted gradually as its needs and importance may appear to the owners of real property. It is hoped and believed that the proposed statute will appeal at once to many owners of land, especially in the larger counties, and that its utility will become more and more apparent with its use.

“4. Such a system should be inaugurated with as little innovation as possible, and as far as practicable should leave the existing law unaffected. It has been the earnest effort of the commission, in drafting the proposed statute, to make it harmonize with the historic and settled principles of our system of real property, and not to make any change except where it was necessary in order to introduce the registration system.

“5. A new law of this character should also avoid as far as possible, the multiplication of public offices and officials, and the use of complicated methods and machinery. It should employ, as far as available, existing agencies and forces.”

Congress has recognized the system adopted in the States named by enactment providing for the entering of judgments rendered by Federal Courts in the various registration districts.

The system, in all its modifications and as adopted in the various States, provides that any owner or owners of land may petition such a Court as may be designated by Act of the Legislature, for leave to register their title to the same, producing their muniments of title and a survey or plan of the property. Then, a complete abstract of title must be prepared, which petition and abstract are referred to an Examiner, upon whose favorable report the Court fixes a time for hearing, of which notice is served upon all known parties within the State by Summons, upon all known parties out of the State by registered mail, and upon all unknown parties by advertisement. At the hearing evidence is taken and all parties interested who appear, are heard. If any legal rights adverse to the application appear, the petition is dismissed without prejudice, or an issue may be framed to be tried before a jury; if warranted by the evidence, the title of the petitioners is declared to be an estate in fee simple, and a decree to that effect is entered upon the record. The effect of the decree is to debar all adverse claimants at the date thereof, who do not appear with a Bill of Review within a stated time; and in some instances to substitute money awards for ownerships divested by the procedure; the lands are also thereby protected from all claims upon adverse possession, and the decree is binding and conclusive equally on those who have appeared, infants, persons insane or under any legal disabilities, absentees, and persons who have not received or could not possibly have received notice of the proceeding. If such parties have estates or interests which are taken from them by this provision

of the law, they are entitled to claim the value thereof in money; lawful method being provided for the adjustment of the same, and a fund is created by a special tax on each proceeding, called an Assurance Fund, with which to pay these claims. The registered land is conveyed and mortgaged by transfer of the certified copy of the decree, which is done by the Register of Deeds of the proper county, who may lay any transaction he doubts the legality of before the Court for its review and instruction.

The Commission is convinced that there is a demand for a change in the system of land transfers in Pennsylvania. This is evidenced, not only by the many representative speakers who attended the meetings above referred to, but by numerous communications which were received.

Recommendations

It is apparent to the Commission, after mature consideration, that the "Torrens System," as above described, can be inaugurated in Pennsylvania and made effective, but an amendment to the Constitution of the State is necessary and your Commission would recommend that an amendment in the form as follows be submitted for adoption:

PROPOSED AMENDMENT TO THE CONSTITUTION.

Laws may be passed providing for a system of registering, transferring, insuring of and guaranteeing land titles by the State or by the counties thereof, and for settling and determining adverse or other claims to and interests in lands the titles to which are so registered, transferred, insured and guaranteed, and for the creation and collection of indemnity funds and for carrying the system and powers hereby provided for into effect by such existing Courts as may be designated by the Legis-

lature and by the establishment of such new Courts as may be deemed necessary. In matters arising in and under the operation of such system judicial powers with right of appeal may be conferred by the Legislature upon County Recorders and upon other officers by it designated. Such laws may provide for continuing the registering, transferring, insuring and guaranteeing such titles after the first or original registration has been perfected by the Court and provision may be made for raising the necessary funds for expenses and salaries of officers which shall be paid out of the treasury of the several Counties.

Notwithstanding the favorable experience of other countries and several of our States, the reform is one that should not be made without exhaustive research and deliberation.

The subject should be referred for further consideration and report, if deemed wise by the Legislature, pending action upon the proposed Constitutional amendment, so that progress of the system in other States of the union may be observed and a carefully prepared scheme of legislation creditable to our great State may be ready for submission.

All of which is respectfully submitted.

Joseph K. Fletcher
John C. Slack
J. Smith Christy
Frank Craven
James E. Lennon

